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OFFICE OF PETITIONS

In re Application of	:	
Marchant, et al.	:	
Application No. 10/823,218	:	DECISION
Filed: April 13, 2004	:	ON PETITION
Attorney Docket No. 26526-15	:	
For: METHODS OF MAKING AND USING	:	
SURFACTANT POLYMERS	:	

This is a decision on the petition under 37 CFR 1.181 to withdraw the holding of abandonment of the above-identified application and in the alternative, the petitions under 37 CFR 1.137(a) and 1.137(b) to revive the above-identified application. The petitions were filed in the same paper on August 14, 2006 (certificate of mailing date August 11, 2006).

The petition under 37 CFR 1.181 is **dismissed**.

The petition under 37 CFR 1.137(a) is **granted**.

The petition under 37 CFR 1.137(b) is **dismissed as moot**.

This application became abandoned for failure to timely submit the issue fee, the publication fee, and a completed PTOL-85(b) in response to the Notice of Allowance and Fee(s) Due, mailed on July 29, 2005, which set a non-extendable three month period for reply. The application became abandoned on October 30, 2005. A Notice of Abandonment was mailed on June 13, 2006.

Petitioners argue that the holding of abandonment should be withdrawn because the July 29, 2005 Examiner's Amendment listed some incorrect claims, and the Office's failure to correct the matter after repeated communications from petitioners resulted in petitioners' failure to pay the issue and publication fees. On September 15, 2005, petitioners filed a 312 amendment to correct the examiner's claim listing and a typographical error. The Office did not formally respond to the 312 amendment. Petitioners filed a Notice of Appeal on the non-extendable due date for payment of the issue fee on certificate of mailing date October 31, 2005. It is noted that petitioners filed

an Appeal Brief on January 3, 2006.

As stated in the July 29, 2005 Notice of Allowance and Fee(s) Due, "... THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED. SEE 35 U.S.C. 151...."

Petitioners are reminded that the requirements set in the July 29, 2005 Notice were never withdrawn. The application did become abandoned three months after July 29, 2005, on October 30, 2005.

The petition under 37 CFR 1.181 to withdraw the holding of abandonment is **dismissed**.

Petitioners request consideration under 37 CFR 1.137(a) next. The \$250.00 petition fee will be charged to deposit account no. 02-2051. Decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). The petition under 37 CFR 1.137(a) is **granted**.

The petition under 37 CFR 1.137(b) is **dismissed as moot**.

The fees paid for filing the improper Notice of Appeal and the Appeal Brief will be refunded to petitioners' credit card.

After the mailing of this decision, the application will be forwarded to Publications Division for processing into a patent.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3230.



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